Supreme Court, U.S.
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NO. 94-220

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1994

SEA SAVAGE, INC., UNDERWRITERS
SUBSCRIBING TO POLICY A&PH 12890
AND AMERICAN HOME ASSURANCE COMPANY
Petitioners

VERSUS

CHEVRON U.S.A. INC.
Respondent

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

REPLY BRIEF BY RESPONDENT, CHEVRON U.S.A. INC. TO PETITION FOR WRITS BY SEA SAVAGE, INC., *ET AL*

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
OPINIONS BELOW	iii
STATEMENT OF THE CASE	2
ARGUMENT	3
1. Randall Was Not a Longshoreman Because He Was a Land-Based Worker . .	3
2. Federal Maritime Law Does Not Preempt State Workers' Compensation Schemes . . .	3
CONCLUSION	5

TABLE OF AUTHORITIES

Page

Cases

Bagrowski v. American Export Isbrandtsen Lines, Inc., 440 F.2d 502 (7th Cir. 1971) 4

Brockington v. Certified Electric, Inc., 903 F.2d 1523 (11th Cir. 1990), *cert. denied*, 498 U.S. 1026, 111 S. Ct. 676, 112 L. Ed. 2d 688 (1991) 2,4

Hagans v. Ellerman & Bucknall Steamship Co., 318 F.2d 563 (3d Cir. 1963); *Thibodeaux v. Atlantic Richfield*, 580 F.2d 841 (5th Cir.), *cert. denied*, 442 U.S. 909, 99 S. Ct. 2820, 61 L. Ed. 2d 274 (1979) 4

Murphy v. Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, 545 F.2d 235 (1st Cir. 1976) 4

Thibodeaux v. Atlantic Richfield Co., 580 F.2d 841 (5th Cir. 1978), *cert. denied*, 442 U.S. 909, 99 S. Ct. 2820, 61 L. Ed. 2d 274 (1979) 3,4

Statutes

33 U.S.C. § 901 3,6

33 U.S.C. § 905(b) 2

LSA-R.S. 23:1021 4-6

LSA-R.S. 23:1032 5

LSA-R.S. 23:1161 5

OPINIONS BELOW

Petitioners, Sea Savage, Inc., its Underwriters Subscribing to Policy A&PH 12890, and American Home Assurance Company (hereinafter collectively referred to as "Sea Savage"), incorrectly state that Suggestions for Rehearing *En Banc* filed by Sea Savage and Respondent, Chevron U.S.A. Inc.,[1] have yet to be ruled upon. The Petitions for Rehearing and Rehearing *En Banc* were denied May 26, 1994. The denial of rehearing is published at 22 F.2d 568 (1994). In the Order denying the Petition for Rehearing and the Suggestions for Rehearing *En Banc*, the court revised its Mandate and removed a footnote from the original opinion. (*See* Order, Chevron's Pet. No. 94-033, App. pp. 103a-04a.)

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[1]Pursuant to Rule 29.1, Chevron submits the following list of its parent company and non-wholly owned subsidiaries to correct the List of Parties submitted by Sea Savage, Pet., p. 1, n. 1:

Parent, Chevron Corporation

Non-wholly owned subsidiaries:
Chevron Capitol U.S.A. Inc.
Chevron Oil Finance Company
Felix Oil Company
Kawanee Industries, Inc.

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REPLY BRIEF BY RESPONDENT, CHEVRON U.S.A. INC. TO PETITION FOR WRITS BY SEA SAVAGE, INC., *ET AL*

Respondent, Chevron U.S.A. Inc. ("Chevron") supports in part the Application for Writ of Certiorari filed herein by Sea Savage, Inc., *et al*, in which petitioners seek review of the judgment of the United States Court of Appeals for the Fifth Circuit dated February 11, 1994. On July 1, 1994, Chevron also filed an Application for Writ of Certiorari seeking review

of said February 11, 1994, judgment and of the Fifth Circuit's Order dated My 26, 1994, denying all parties' suggestions for *en banc* consideration.

STATEMENT OF THE CASE

Chevron supports the Petition in part. Chevron disputes only Sea Savage's statements as to the lower courts' basis of allocation of 75% of the liability to Sea Savage and 25% to Chevron. Sea Savage correctly reports that, because the district court held that Mr. Randall was a longshoreman within the meaning of the Longshore Harbor Workers' Compensation Act, it also held that the claims against all defendants are governed by 33 U.S.C. § 905(b).[2] Sea Savage argues that if the district court had considered Chevron's negligence in its capacity as the owner and operator of an offshore oil platform, then Chevron's negligence would not have been covered under the vessel's marine Protection & Indemnity policy. (Sea Savage Pet., p. 4). Contrarily, Chevron contends that the result of the previous holding would be to prevent any claim from being asserted against Chevron as the decedent's employer.

Chevron also contends that the Louisiana State Workers' Compensation Statute represents the exclusive remedy for the death of Mr. Randall. In short, Chevron supports the result of the holding of the Eleventh Circuit Court of Appeals in *Brockington v. Certified Electric, Inc.*, 903 F.2d

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[2]*See* DistrictCourt Opinion, Sea Savage Pet., App. p. 47a.

1523 (11th Cir. 1990), *cert. denied*, 498 U.S. 1026, 111 S. Ct. 676, 112 L. Ed. 2d 688 (1991), as opposed to the contrary result reached by the Fifth Circuit in *Thibodeaux v. Atlantic Richfield Co.*, 580 F.2d 841 (5th Cir. 1978), *cert. denied*, 442 U.S. 909, 99 S. Ct. 2820, 61 L. Ed. 2d 274 (1979).

ARGUMENT

1. Randall Was Not a Longshoreman Because He Was a Land-Based Worker

As fully briefed in Chevron's Petition, No. 94-0033, for Writ of Certiorari, Chevron agrees with Sea Savage that this Court should answer the question of whether an exclusively land-based worker who is not engaged in maritime employment is transformed into a longshore worker within the meaning of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*, solely because he is injured on a vessel while being transported to and from his job site over navigable state waters. Chevron also agrees that Mr. Randall was not a longshore harbor worker. Therefore, Chevron respectfully suggests that Sea Savage's Petition should be considered together with Chevron's Petition for Writ of Certiorari, No. 94-0033, which was filed on July 1, 1994, and that writs be granted in both petitions. *See also*, Petition No. 93-1812.

2. Federal Maritime Law Does Not Preempt State Workers' Compensation Schemes

Sea Savage suggests that general maritime law preempts application of the exclusivity provisions of state compensation

statutes and requests this Court to remand this matter for further proceedings to determine the issue of insurance coverage for Chevron's share of liability for negligence. (Sea Savage, Pet. p. 4, n. 8 and p. 13, n. 14.) Chevron submits that the Louisiana Workers' Compensation Act, LSA-R.S. 23:1021 *et seq.*, provides the sole remedy for land-based, non-maritime employees.

There is a conflict among the circuits on the issue of whether a maritime remedy preempts state workers' compensation schemes. Specifically, the Third, Fifth and Seventh Circuits found preemption. *Hagans v. Ellerman & Bucknall Steamship Co.*, 318 F.2d 563 (3d Cir. 1963); *Thibodeaux v. Atlantic Richfield*, 580 F.2d 841 (5th Cir.), *cert. denied*, 442 U.S. 909, 99 S. Ct. 2820, 61 L. Ed. 2d 274 (1979); *Bagrowski v. American Export Isbrandtsen Lines, Inc.*, 440 F.2d 502 (7th Cir. 1971). Contrarily, the First and Eleventh Circuits find no preemption. *Murphy v. Woods Hole, Martha's Vineyard and Nantucket Steamship Authority*, 545 F.2d 235 (1st Cir. 1976); *Brockington v. Certified Electric, Inc.*, 903 F.2d 1523 (11th Cir. 1990), *cert. denied*, 498 U.S. 1026, 111 S. Ct. 676, 112 L. Ed. 2d 688 (1991).

States have a strong interest in application of state workers' compensation law while there is no comparable interest in favor of application of general maritime law. *Brockington*, 902 F.2d at 1533. The local character of the parties and the land-based nature of their employment indicate that their respective rights should be controlled by state law.

The Randalls availed themselves of the benefits of the Louisiana Workers' Compensation Act. The Act codified at LSA-R.S. 23:1021 *et seq.*; 23:1161 *et seq.* (1994 Supp.), constitutes a statutory compensation scheme that provides that workers' compensation benefits are an employee's exclusive remedy against his employer. LSA-R.S. 23:1032 (1994 Supp.). In exchange for imposition of strict liability, an employer is statutorily immune from civil liability. *Id.*

Limiting an entirely land-based non-maritime worker's remedy to one solely under state worker's compensation law will not work material prejudice to the characteristic features of maritime law or interfere with the proper harmony or uniformity of general maritime law in international or interstate relations. Louisiana's interest in regulating the relationship between employers and employees should govern. Therefore, if this Court finds that Randall was covered by Louisiana's Workers' Compensation Act, then this Court should further rule that the State Act is exclusive and that no maritime action can be brought against his employer.

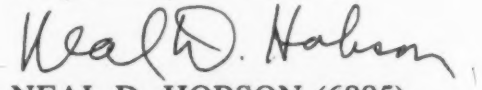
CONCLUSION

For the foregoing reasons, Respondent, Chevron U.S.A. Inc., respectfully requests that Sea Savage's Petition for Writ of Certiorari be considered jointly with Chevron's Petition No. 94-0033 for Writ of Certiorari and Sea Savage's Petition No. 94-220, and that this Court answer at last the question of whether the Longshore and Harbor Workers' Compensation Act applies to non-maritime workers injured while fortuitously

in transit to or from work. Further, Chevron requests that this Court overrule Fifth Circuit precedent which holds that federal admiralty law automatically displaces State Worker's Compensation laws and restore uniformity among the circuits.

After due proceedings be had, Chevron U.S.A. Inc. requests that there be judgment reversing the holding of the District Court and of the Court of Appeals, insofar as those judgments hold that Theodore F. Randall, Jr., was covered by the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901, *et seq.*, and hold instead that the sole remedy for his injury is the remedy provided by the Louisiana Workers' Compensation Statute, LSA-R.S. 23:1021, *et seq.*

Respectfully submitted,



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